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Nos. 05-908 and 05-915

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IN THE

Supreme Court of the United States

PARENTS INVOLVED IN COMMUNITY SCHOOLS,
Petitioner,

v.

SEATTLE SCHOOL DISTRICT NO. 1, *ET AL.*,
Respondents.

CRYSTAL D. MEREDITH, CUSTODIAL PARENT AND NEXT FRIEND OF JOSHUA RYAN MCDONALD,
Petitioner,

v.

JEFFERSON COUNTY BOARD OF EDUCATION, *ET AL.*,
Respondents.

On Writs of Certiorari to the United States Courts of Appeals for the Ninth and Sixth Circuits

BRIEF OF THE COLLABORATIVE OF CATHOLIC LEADERS AND ORGANIZATIONS AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICUS CURIAE*

This amicus brief represents the views of the undersigned Collaborative of Catholic Leaders and Organizations who agree that the fundamental principles of Catholic Social Thought help illuminate the proper resolution of these two cases within the parameters of American constitutional law.[1] Catholic Social Thought offers a systematic and synthetic ethical framework that articulates the best hopes for the authentic development of the whole of humanity. It is from within this framework that Amici seek to cooperate in finding solutions to the outstanding problems of our time, one of which remains the segregation of our public schools. At the core of this effort lies a conviction that the just outcome of these cases will provide a rich opportunity for our democracy to better protect the dignity and basic rights of all members of society.

SUMMARY OF ARGUMENT

Amici share a religious principle that places the right to make choices about a child's education firmly in the hands of the parents. This is a right that the state must respect and promote, and that the family must not neglect or delegate. According to this principle, parents' authority over the selection of schools is nearly always anterior to all others – governmental or ecclesiastical. This emphasis upon parental primacy is consistent with state and federal constitutions and can help illuminate their implications. Not only is parental choice justified as a good in itself, it is consistent with the Catholic social principle of "subsidiarity" that locates

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[1] Pursuant to Supreme Court Rule 37.6, the Collaborative of Catholic Leaders affirms that no counsel for any party authored this brief in whole or in part and that no person or entity made a monetary contribution specifically for the preparation or submission of this brief.

authority nearest the object of its exercise. This principle supports assignment plans that empower ordinary families to choose from all schools within their districts. This empowerment is a distinctly compelling interest of the just state.

Racial integration is a second distinctive value and compelling interest of the just state. Racial segregation of schools violates the dignity of the human person and detracts from the solidarity of communities. It is a plain and primary injustice.[2] Integration signals the end to segregation and the beginning of something beyond even desegregation – an attentiveness to the marginalized of society that fosters the authentic human development of *all* members of society.

The extension of parental choice to multitudes of ordinary families, coupled with the achievement of an integrated community within each of the districts' schools, is a step toward justice and a contribution to the common good. Viewing the record, and given our Catholic and American understanding of justice, we urge the Court to acknowledge as compelling the two interests fostered by respondents –

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[2] The Catholic Church and its bishops have issued many statements on racism. *See, e.g.*, U.S. Conference of Catholic Bishops, *Brothers and Sisters to Us: U.S. Bishops' Pastoral Letter on Racism in Our Day* (1979) (addressing the intersection of race and poverty); U.S. Conference of Catholic Bishops, *Love Thy Neighbor as Thyself: U.S. Catholic Bishops Speak out Against Racism in Our Day* (1979); Pontifical Commission of Justice and Peace, The Catholic Church, *The Church and Racism: Towards a More Fraternal Society* (1988) (denouncing institutionalized racism sanctioned by the constitution and laws of a country, for example, South Africa's former system of apartheid; spontaneous racism, as found in a nationalism that harms immigrants; and systemic racial prejudice such as anti-Semitism); Pontifical Commission of Justice and Peace, *The Church and Racism: An Introductory Update* (2001) (updating the 1988 report by the Pontifical Commission). *See also* Black Catholic Bishops of the United States, *What We Have Seen and Heard, Black Bishops' Pastoral Letter on Evangelization* (1984) (denouncing the subtle and masked racism that still festers within society).

parental choice and integration – pursued in a mutuality that is narrowly tailored to ameliorate two entrenched evils: the marginalization of the opportunity-poor family and the perpetuation of racial segregation.

In these cases, the Seattle School District ("Seattle") and the Jefferson County Board of Education ("JCPS") have carefully adopted broad measures to maximize parental choice in school selection, extending it to all urban families, rich and poor, save in the relatively unusual case in which a particular assignment would increase racial composition beyond certain broad limits. These major urban school districts strive to achieve a measure of racial integration by avoiding the traditional practice of student assignment based solely on residency, a practice whose foreseeable effect is to racially isolate more desirable schools from less desirable schools. Petitioners challenge the Seattle and JCPS plans, not because they deny choice, but because they place narrow limitations upon an expanded notion of parental choice in order to foster racial integration. In so doing, Petitioners are effectively asking Respondents to take meaningful choice away from the vast majority of families and to risk resegregation of the districts. This is a dilemma the Court need not countenance.

ARGUMENT

I. DISTRICTS' RACE-CONSCIOUS ASSIGNMENT PLANS MAXIMIZE PARENTAL CHOICE, WHICH IS A COMPELLING STATE INTEREST AND IS IN KEEPING WITH CATHOLIC SOCIAL THOUGHT.

A. Maximizing Parental Choice is a Compelling State Interest.

In *Meyer v. Nebraska*, 262 U.S. 390 (1923), this Court held that the "liberty" protected by the Due Process Clause

includes the right of parents to "establish a home and bring up children," and "to control the education of their own." *Id.* at 399. Three years later in *Pierce v. Soc'y of Sisters*, 268 U.S. 510 (1926), this Court upheld, "the liberty of parents and guardians to direct the upbringing and education of children under their control." *Id.* at 434-35. It follows that "[t]he child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." *Id.* at 435. Subsequent cases reaffirm this understanding of parental choice.[3]

More recently, in *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002), this Court made a broad declaration of the constitutionality of "true private choice." *Id.* at 653. The State undertook a general, multifaceted approach to provide educational opportunities to the children and to facilitate parental choice. The only preference was for low-income families, who were given priority in obtaining vouchers. *Id.* Like the parents who wish to use a voucher to secure entry into a school, parents here should enjoy the right to choose where and from whom their child learns. Petitioners in *Zelman* drew upon *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954), to remind the Court that it promised equal

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[3] *See Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) ("It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder."); *Wisconsin v. Yoder*, 406 U.S. 205, 213 (1972) ("There is no doubt as to the power of a State, having a high responsibility for education of its citizens, to impose reasonable regulations for the control and duration of basic education. Providing public schools ranks at the very apex of the function of a State. Yet even this paramount responsibility yield[s] to the right of parents to provide an equivalent education in a privately operated system."); *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (upholding the "fundamental right of parents to make decisions concerning the care, custody, and control of their children").

educational opportunities for all American school children. But parental choice is not equitably distributed. For some, the promise has become a reality; for others who live in impoverished, segregated neighborhoods, it has been an illusion. *See* Kimberly J. Jenkins, *Private Choices, Public Consequences: Public Education Reform and Feminist Legal Theory*, 12 Wm. & Mary J. Women & L. 563, 566 (2006). The opportunity-rich family may either move to a neighborhood with a better school, or pay tuition at a private one. The opportunity-poor family may succumb to educational despair, disinvestment, and even failure.

Here, Respondent districts have decided, as a matter of good policy, to extend the practical enjoyment of this constitutional parental right to choose on an equal basis to all families.[4] In so doing, the government is providing the poor and working class parents with the means necessary to make their right a meaningful one. By employing race-conscious assignment plans, JCPS and Seattle are empowering parents with educational options they had not previously had, and from which they can now choose what is best for their child. In processes such as these, a very small number of parents will have their choices restrained. Stephen Eisdorfer, *Public School Choice and Racial Integration*, 24 Seton Hall L. Rev. 937, 942 (1993) (citing U.S. Department of Education, *Getting Started: How Can Choice Renew Your Public Schools* 19-24 (1992)); *see also* Constance Hawke, *The "Choice" for Urban School Districts: Open Enrollment or*

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[4] In its plan, the District rejected distinctly coercive alternative modes of integration specifically, "...because of the high value [it] places on parental and student choice." *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 426 F. 3d 1162, 1189 (2005) [hereinafter *Parents Involved*]. In *McFarland v. Jefferson County Public Schs.*, 330 F. Supp. 2d 834 (2006), Judge Heyburn emphasized that "choice may be the most significant element of the 2001 Plan," *id.* at 842, and then again, that a lottery system "would require a dramatic sacrifice in student choice." *Id.* at 860.

Desegregation?, 115 Educ. L. Rep. 609 (1997). But when maximized properly, parental choice leads to greater integration – at which point two compelling state interests mutually reinforce one another. In short, Seattle and JCPS have conscientiously converted what for the opportunity-poor had been a beautiful but empty constitutional right into a very practical public policy. Their two challenged assignment plans deserve to be defended in light of this commonly declared objective.

The posture of Petitioners, who clearly have honored choice in the past by their enthusiastic participation in it, is puzzling. Now among the few who are unsuccessfully exercising it, they effectively ask Respondents to offer race-neutral choice, with its predictable tendency to perpetuate racial segregation, which is no choice at all.

B. The Principles of Subsidiarity and the Preferential Option for the Poor Support Parental Choice.

According to Catholic Social Thought, the principle of subsidiarity holds that, in order to protect basic justice, government should undertake only those initiatives that exceed the capacities of individuals or private communities. U.S. Conference of Catholic Bishops, *Economic Justice for All* ¶124 (1986). By virtue of this principle, public authorities cannot and must not take away from families the functions that they can perform on their own or in free associations; instead it must positively favor and encourage as far as possible responsible initiative by families. In the conviction that the good of the family is an indispensable and essential value of the civil community, the state must do everything possible to ensure that families have all the aids – economic, social, educational, political and cultural – that they need in order to face all their responsibilities in a human way. Pope John Paul II, *Familiaris Consortio: On the*

Family ¶45 (1996). Respondents seek to provide these aids to more families—particularly the impoverished ones—by extending greater educational choices to them.

The moral test of a society is how it treats its most vulnerable and marginalized members. These members have the most urgent and even privileged moral claim on the conscience of the nation. This "preferential option for the poor" is not an adversarial slogan that pits one group or class against another. Rather it states that the deprivation and powerlessness of the vulnerable not only compromises their dignity, but wounds the whole community. U.S. Conference of Catholic Bishops, *Economic Justice for All, supra,* at ¶88.

The primary purpose of this special commitment to the poor is to empower them to become active participants in the life of society. The extent of the suffering of the disempowered is a measure of how far we are from being a true community of persons. A healthy community can be achieved only if those who are more influential because they have greater share of opportunities are responsible for the weaker and ready to share with them all they possess. *Id.* at ¶87-88; Pope John Paul II, *Sollicitudo Rei Socialis: On Social Concern* ¶39 (1987). Sound and just public policy decisions, including how to assign students to public schools, turn on how they affect the most marginalized.

In its 1979 pastoral letter on racism, the U.S. Conference of Catholic Bishops recognizes economic and racial oppression as interrelated forces that dehumanize our society. U.S. Conference of Catholic Bishops, *Brothers and Sisters to Us, supra*, at 1. As both the District Court and Ninth Circuit noted, concentrated poverty, which commonly coexists with segregated neighborhoods and schools, is much more likely to adversely affect black students than whites. Racially isolated schools experience much higher rates of poverty,

lower average test scores, lower levels of student achievement and less qualified staff. *McFarland*, 330 F. Supp. 2d at 854; *see also* Chester Hartman, *Double Exposure: Poverty and Race in America* (1997). In turn, the poverty level of schools influences the scores of all children, including those from more advantaged families. U.S. Department of Education, *Mapping Out the National Assessment of Title I: The Interim Report, 1996* (1996). Since public schools are intended to create a common preparation for citizens in an increasingly multiracial society, this inequality can have serious consequences. For these reasons, Seattle and JCPS hold out school integration as beneficial to their students and to their school systems as a whole. It equalizes educational opportunities and minimizes racial, class and geographic bifurcations. *McFarland*, 330 F. Supp. 2d at 854; *Parents Involved*, 426 F.3d at 1177.

C. The Common Good and Solidarity Balance the Larger Community's Needs with Individual Interests to Maximize Parental Choice.

Humans are social creatures that achieve fulfillment in community. With growing globalization and interdependence, the importance of pursuing the good of the whole community increases. U.S. Conference of Catholic Bishops, *Communities of Salt and Light: Reflections on the Social Mission of the Parish* 10 (1993). According to Catholic Social Thought, the "common good" is "the sum of those conditions of social life which allow social groups and their individual members relatively thorough and ready access to their own fulfillment." Second Vatican Council, *Gaudium et Spes: Pastoral Constitution on the Church in the Modern World* ¶26 (1965). The common good requires that all members of the state be entitled to share in it, although in different ways according to each one's tasks, merits, and

circumstances. Pope John XXIII, *Pacem in Terris: Peace on Earth* ¶56 (1963). Every social group is called to attend to the needs and legitimate aspirations of other groups, and even of the general welfare of the entire human family. Second Vatican Council, *supra*, at ¶26.

The state, in turn, is charged with ensuring the realization of the common good. Pope John XXIII, *Mater et Magistra: Christianity and Social Progress* ¶20 (1961). Every civil authority, including school districts, must create the conditions required for attaining humanity's complete good, while respecting the legitimate liberties of individuals, families, and subsidiaries. Pope Paul VI, *Octogesima Adveniens: A Call to Action on the Eightieth Anniversary of Rerum Novarum* ¶46 (1971). Justice and equity, however, may at times require the state to give more attention to the disempowered members of the community, since they are less able to defend their rights and to assert their legitimate claims. Pope John XXIII, *Pacem in Terris*, *supra*, at ¶56 Unless state authorities take suitable action with regard to economic, political, and cultural matters, inequalities between the citizens become more pronounced and entrenched. *Id.* at ¶63. In the cases before this Court, unless Respondent school districts are allowed to attend to the marginalized, parental choice will be diminished and the preferences of the few privileged will prevail. Rather, race-conscious assignment plans allow Seattle and JCPS to maximize choice by balancing the needs of the larger community with individual interests.

The common good Respondents foster is not forged at the expense of one race or one ethnic group as a means of assimilation.[5] Nor is it fostered without risk. Challenging

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[5] In his dissent in *Parents Involved*, Justice Bea mischaracterizes the nature of the common good as it unfolded in the United States. He claims that people

our nation's emphasis on individual freedom and merit through race-conscious desegregation plans may leave some whites feeling they are "victims." *Parents Involved,* 426 F.3d at 1206. But this is not a matter of simply diffusing unfairness—it is a matter of pursuing a common good that is defined by authentic human development for all. Integration is central to that common good and it requires concerted race-conscious efforts similar to those of Respondents on behalf of school districts across the nation.

Because all humankind make up one human family, the common good is realized in solidarity. Solidarity is not a feeling of vague compassion for or shallow distress at the misfortunes of others, but a firm and persevering determination to commit oneself to the common good, to the good of all and of each individual. Pope John Paul II, *Sollicitudo Rei Socialis*, *supra*, at ¶38. But a freedom that exalts the individual in an absolute way creates no place for solidarity. Pope John Paul II, *Evangelium Vitae: The Gospel of Life* ¶19 (1995). For this reason, the U.S. Catholic Bishops call for a move from devotion to independence to a commitment to human solidarity through an understanding of interdependence. U.S. Conference of Catholic Bishops, *Economic Justice for All, supra*, at ¶365.

Seattle and JCPS are aware of the potential effects race-conscious measures and burdens might have on the solidarity of their communities. For this reason, they have tailored their plans narrowly and have avoided undue harm. The

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voluntarily came to this great "melting pot" and were not told whether they were white or nonwhite or where to go to school based on their race. Rather, they set aside their differences and embraced "our common values." *Parents Involved*, 426 F.3d at 1199 (Bea, J. dissenting). But African-Americans did *not* come to this nation voluntarily, *were* told where to go to school, and were not asked to embrace "common" values, but to assimilate into the values of the dominant group.

Ninth Circuit found that under Seattle's plan, "the burden of not being allowed to attend one's preferred school is shared by all students equally." *Parents Involved*, 426 F.3d at 1191. Moreover, it is undisputed that the race-based tiebreaker does not uniformly benefit one race or group to the detriment of another. *Id.* at 1192.

II. DISTRICTS' RACE-CONSCIOUS ASSIGNMENT PLANS FOSTER INTEGRATION, WHICH IS A COMPELLING STATE INTEREST AND IS IN KEEPING WITH CATHOLIC SOCIAL THOUGHT.

A. Integration is a Compelling State Interest.

The compelling interest of the State in expanding choice is no less compelling simply because districts deploy it to remedy a racial segregation that was buttressed by its own assignment rules. Integration actually reinforces, not conflicts with, parental choice. As the court in *McFarland*, described it, there is a co-agency between parental choice and racial integration that works for the common good:

> [c]hoice and integrated schools, the Board believes, invest parents and students alike with a sense of participation and a positive stake in their schools . . . *McFarland*, 330 F. Supp. 2d at 854.

Moreover, this Court has expressly authorized school authorities to voluntarily employ race-based measures to desegregate the schools even absent a finding of *de jure* segregation.[6] In *Charlotte-Mecklenburg Board of Education v. Swann*, 402 U.S. 1, 16 (1971), this Court held that school

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[6] The distinction the United States wishes this Court to uphold between *de jure* and *de facto* segregation is untenable in the context of voluntary remediation. Brief for the United States as *Amicus Curiae* in Support of Petitioners, *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, No. 05-908; *Meredith v. Jefferson County Bd. of Educ.*, No. 05-915, p. 10 (filed Aug. 17, 2006) [hereinafter United States Brief].

authorities have broad power to consider race when formulating educational policy. *See also Green v. County School Bd. of New Kent Count, Virginia* , 391 U.S. 430, 437 (1968).

Both school districts try to balance choice and race-consciousness. In its 2001 plan, JCPS provides students numerous and varied choices among specialized schools and programs. Race is not "the defining feature" in student assignment, rather it is one possible factor that acts as a "plus" and is used in a limited way to promote the good of all students. *McFarland*, 330 F. Supp. 2d at 859, 861. Only a small number of elementary school students attend a school that is not one of their choices. *Id.* at 843-44. Through their 1998-99 open choice plan, Seattle also attempts to balance the goals of choice and racial diversity. *Parents Involved*, 426 F.3d at 1168. As Judge Kozinski writes in his concurrence, a plan that emphasizes school choice, yet tempers such choice to ensure that the schools reflect the city's population, is eminently sensible. *Id.* at 1194. Indeed, without race-conscious measures, spatial racism, as manifest in segregated housing and schools, will persist and the choices of opportunity-poor students will be frustrated. [7]

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[7] In his Pastoral Letter on Racism, *Dwell in My Love*, Francis Cardinal George, O.M.I., Archbishop of Chicago refers to spatial racism as patterns of metropolitan development in which some affluent whites create racially and economically segregated suburbs or gentrified areas of cities, leaving the poor – mainly African Americans and Hispanics isolated in deteriorated areas of the cities and older suburbs. Francis Cardinal George, *Dwell in My Love* 5-14 (2001). Experts have documented the devastating impact of this racial and economic isolation. *See, e.g.*, Glenn C. Loury, *The Anatomy of Racial Inequality* (2002). Myron Orfield, *Metro-Politics: A Regional Agenda for Community and Stability* (1998); Melvin Oliver and Thomas M. Shapiro, *Black Wealth/White Wealth: A New Perspective on Racial Inequality* (1995); David Rusk, *Cities Without Suburbs* (1993); Douglas S. Massey and Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* (1993); Gary Orfield and Carole

B. Integration Fosters the Dignity of the Human Person.

Because all human life is sacred, each human person is worthy of dignity. To be well-ordered and productive, society must act on the foundational principle that every human being is a person whose nature is endowed with intelligence and free will. Pope John XXIII, *Pacem in Terris*, *supra*, at ¶9. Justice and consideration of neighbor as another "self" preserves and nurtures this dignity, which transcends disability, poverty, age, lack of success, or race. U.S. Conference of Catholic Bishops, *The Challenge of Peace: God's Promise and Our Response* ¶15 (1983). The right to all that is necessary for living an authentic life is universal and inviolable, including the right to an education. *Gaudium et Spes*, *supra*, at ¶26.

Segregation violates the dignity of the human person. The entrenched social structures in which humans live, work, and learn can impede the full realization of personhood.[8] Many policies and practices perpetuate the highly inequitable and dehumanizing realities of spatial and institutional arrangements that privilege whites over nonwhites and prevent society from realizing the kind of human community that is necessary for genuine human development and happiness. Harry J. Flynn, *In God's Image: Pastoral Letter on Racism* 19 (2003). Pope John Paul II argues that "to destroy such structures and replace them with more authentic forms of living in community is a task which demands courage and patience." *Centesimus Annus: On the Hundredth Anniversary of Rerum Novarum* ¶39 (1991). Efforts such as

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Ashkinaze, *Closing Door: Conservative Policy and Black Opportunity* (1991); and William Julius Wilson, *The Truly Disadvantaged* (1987).

[8] In his dissent in *Parents Involved* ,Justice Bea claims that the majority misuses the term "segregate" because it is a transitive verb that requires an actor to do an act which effects segregation. *Parents Involved*, 426 F.3d at 1197.

those undertaken by Seattle and JCPS to change patterns of racial, cultural, and economic balkanization require institutional support, particularly from this Court.

Integration, then, fosters the dignity of the human person and inculcates an entirely human way of life in justice. Synod of Bishops, *Justice in the World* 296 (1971). It is not, as the Petitioners in Seattle claim, a form of "racial balancing for its own sake." Brief for Petitioners, *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, No. 05-908; *Meredith v. Jefferson County Bd. of Educ.*, No. 05-915 (filed August 17, 2006) (citing *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 307 (1978)). In choosing to voluntarily desegregate, JCPS strives to improve student education by providing substantially uniform educational resources and by teaching critical thinking skills in a racially integrated and diverse environment. Students of all races learn racial tolerance, practice cross-racial understanding, appreciate the nation's diverse heritage, and build a firm foundation for good citizenship and concern for the "other." JCPS also seeks to foster community support for its schools. *McFarland*, 330 F. Supp. 2d at 837, 852. Similarly, Seattle acts to secure the educational and social benefits of racial and ethnic diversity, and to ameliorate the racial isolation or concentration in its high schools that mirror the area's segregated housing patterns. *Parents Involved*, 426 F.3d at 1166. Equal access to equal schools, faculties, and course offerings enable all students "to reach their full potential." *Id.* at 1174.

This Court has emphasized since *Brown* that public schools are a vital institution in transmitting the values on which our society rests. *See Brown*, 364 U.S. at 493; *see also Plyer v. Doe*, 457 U.S. 202, 221 (1982). Education affords more than just skills and knowledge—it socializes students and contributes to their journey toward authentic living in

justice. Integrated education increases awareness and experience of cultural and social diversity. Students abandon patterns of seeing those who are racially different from themselves as strangers, making our society more fully human. Flynn, *supra*, at 12.

Although the United States would like the Court to believe that the racial classifications of "black" and "white" employed by JCPS, and of "white" and "nonwhite" employed by Seattle are so simplistic as to render diversity-seeking endeavors illegitimate. They are not mere "racial stereotypes," but are fluid descriptors, not of the demographic make-up of society, but of the realities of spatial and institutional arrangements that perpetuate racial stratification and inequalities along a color line. *McFarland*, 339 F. Supp. 2d at 830, n.6; *Parents Involved*, 426 F.3d at 1166; United States Brief at 12. Despite increasingly racially diverse public school enrollment, white students are becoming more segregated from black and Latino students. Erika Frankenberg & Chungmei Lee, The Civil Rights Project at Harvard, *Race in American Public Schools: Rapidly Resegregating School Districts* 4 (2002).[9] Seattle itself struggles to overcome the all too real racial isolation of "white" from "nonwhite" neighborhoods and to keep it from segregating their schools. *Parents Involved*, 426 F.3d at 1177-78.[10]

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[9] Many of the districts experiencing the largest changes in black-white exposure are also having similar changes in Latino exposure to whites. Frankenberg & Lee, *supra*, at 4; *see also* Elizabeth M. Grieco & Rachel C. Cassidy, "Overview of Race and Hispanic Origin," Census 2000 Brief, U.S. Bureau of the Census, March 2001.

[10] As some of Petitioner's *amici* have argued, the school districts would not be attempting to engineer some "right mix" of persons, but to avoid a "wrong mix" where segregation diminishes racial diversity. *See, e.g.*, Brief for Florida Governor John Ellis "JEB" Bush and the State Board of Education as *Amici*

III. DEFERENCE TO DISTRICTS IS APPROPRIATE AND IS IN KEEPING WITH CATHOLIC SOCIAL THOUGHT.

A. The Federal Courts Should Defer to Districts' Authority to Achieve Integration by Furthering Parental Choice.

Federalism, by its very nature allows problem solving to be performed at the lowest level possible. This does not mean that the government that governs least, governs best. Rather, it acknowledges that the appropriate level of intervention must be determined in each instance.

As the U.S. District Court noted in *McFarland*, this Court has "strongly endorsed the role and importance of local elected school boards as they craft educational polices for their communities." *McFarland,* 330 F. Supp. 2d at 850 (citing *Milliken v. Bradley*, 418 U.S. 467, 481 (1992)); *See also Freeman v. Pitts*, 503 U.S. 467, 490 (1992) (explaining that local autonomy of school districts is a vital national tradition); *Bd. of Educ. Okla. City Pub. Schs. v. Dowell*, 498 U.S. 237, 248 (1991) (noting that local control allows for participation and innovation); *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 49-50 (1973) (explaining that local control of schools leads to healthy competition of educational excellence).

Indeed, deference to local school boards goes to "the very heart of our democratic form of government." *Id.* As the Ninth Circuit recognized, much can be gained from states employing locally appropriate means to achieve desirable ends. *Parents Involved*, 426 F.3d at 1190. Rather than

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Curiae in Support of Petitioners, *Parents Involved in Community Schools v. Seattle Sch. Dist. No. 1*, No. 05-908; *Meredith v. Jefferson County Bd. of Educ.*, No. 05-915, p. 29, n.18 (filed Aug. 17, 2006).

prohibiting Seattle and JCPS from implementing race-conscious voluntary desegregation plans, the Court should view these plans as an extension of its school desegregation jurisprudence. *McFarland*, 330 F. Supp. 2d. at 851.

B. The Principles of Subsidiarity and the Common Good Justify Deference to Districts.

Although society as a whole has the moral responsibility to enhance human dignity, the government also has a moral responsibility and authority to safeguard human rights. The principle of subsidiarity holds that, in order to protect basic justice, government should undertake only those initiatives that exceed the capacities of individuals or private communities. The functions of government should be performed at the lowest level possible, as long as they can be performed adequately. However, when the needs in question cannot adequately be met at the lower level, then it is not only necessary, but imperative that higher levels of government intervene. *Economic Justice for All*, *supra*, at ¶124.

Here the educational and housing needs of the racially and economically marginalized are not being met and merit government intervention. Pope John Paul II, *Centesimus Annus*, *supra*, at ¶40. The United States admits that segregated housing patterns in Seattle could remain constant if parents and students continue to prefer neighborhood schools. United States Brief at 29. Without race-conscious desegregation measures, segregation will persist if not worsen. Frankenberg & Lee, *supra*, at 4 ("As courts across the country end long-running desegregation plans and, in some states, have forbidden the use of any racially-conscious student assignment plans, the last 10-15 years have seen a steady unraveling of almost 25 years worth of increased integration. From the early 1970s to the late 1980s, districts

in the South had the highest levels of black-white desegregation in the nation; from 1986-2000, however, some of the most rapidly resegregating districts for black students' exposure to whites are in the South").

It is the task of the state and of all society to defend the common good. Pope John Paul II, *Centesimus Annus*, *supra*, at ¶40. Unless authorities take suitable action with regard to economic, political and cultural matters, inequalities between citizens tend to become more and more widespread. Pope John XXIII, *Pacem in Terris*, *supra*, at ¶63. It is precisely this type of action that Seattle and JCPS voluntarily undertake, primarily to equalize the opportunities for the vast majority of families.

In his dissenting opinion in *Parents Involved*, Justice Bea rejects this balancing of interests. He does not dispute the benefits of integration, however he believes the issue is whether this idea "may be imposed by government coercion, rather than societal conviction; whether the students and their parents may choose, or whether their government may choose for them." *Parents Involved*, 426 F.3d at 1196. Justice Bea ignores the reality that choice is always relational, not individual. It is not simply that people choose to sort themselves by living near members of their own ethnic or racial group and that schools mirror these choices. *Id.* at 1220. The choices that one has to choose from are constrained by institutional arrangements; and the choices that one makes constrain the choices available to others.

That is, if concentrated poverty and segregation produce a failing neighborhood school, then the choices of those in the neighborhood are constrained. If, on the other hand, a thriving neighborhood produces a healthy school, and those in the neighborhood choose to go there, then the choices of those outside the neighborhood are constrained because there

are no further openings in that school. Without race-conscious measures, the question merely becomes which parents are in the best position to exercise their choice of which school their child will attend and where. In pursuing integration, respondents are attempting to mitigate the institutional arrangements that constrain choices, freeing up marginalized parents to choose better schools, while at the same time allowing the maximum amount of choice to those parents in the position to constrain.

The principle of subsidiarity provides a way to navigate this quagmire. The school districts, charged with fostering the common good, are the actors at the proper level to make the decisions about how the compelling goal of integration will be met. Seattle and JCPS are not negating parental choice, but facilitating it. They strike a balance by maximizing choice for the vast majority of students, and particularly for students oppressed by segregated arrangements – to who society must give a preference. Respondents are assuming a responsibility for achieving integration, without which parental choice would be limited to the opportunity-rich few.

If this Court were to take away Respondents' authority to achieve integration in their schools, it would uproot its long-standing principle of federalism that defers to local school boards, as well as the principle of subsidiarity, shared by Amici here. More detrimentally, a ruling for Petitioners would diminish parental choice and invite resegregation. To expand parental choice and foster integration, to safeguard the dignity of the human person and support the common good of society, this Court should permit Respondent school districts to continue to implement their race-conscious student assignment plans.

CONCLUSION

Because parental choice and integration are mutually reinforcing compelling state interests that promote human dignity and the common good, the Collaborative of Catholic Leaders and Organizations respectfully requests that this Court affirm the decisions of the 6th and 9th Circuit Courts of Appeals in these cases.

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APPENDIX

APPENDIX

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